

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

DAMIEN EMERSON, )  
vs. )  
Plaintiff, )  
vs. ) Civil Action File NO.  
WAL-MART STORES EAST, ) [Removed from The State Court of  
LP, CASEY DOE I, CASEY DOE ) Fulton County; Civil Action File No.  
II, AND CASEY DOE III, ) 23EV000412]  
Defendants. )

**NOTICE OF REMOVAL**

COME NOW defendants Wal-Mart Stores East, LP, and CASEY DOE I-3 (improperly named), named Defendants in the above-captioned matter, within the time prescribed by law and without waiving any defenses, to file this Notice of Removal, respectfully showing this Honorable Court, as follows:

1.

On January 19, 2023, plaintiff Damien Emerson filed a Complaint for damages against Defendants in the State Court of Fulton County, State of Georgia (located in the Northern District of this Court) under Civil Action File Number 23EV000412 and styled, Damien Emerson v. Wal-Mart Stores East, LP, Casey Doe I, Casey Doe II, and Casey Doe III. (True and correct copies of all pleadings

filed in the State Court case and served upon or otherwise provided to Defendant are attached hereto as Exhibit "A").

2.

Defendant was served with Plaintiff's Complaint on January 27, 2023. (Exhibit "B").

3.

Upon information and belief, Plaintiff is a citizen of the State of Georgia. (See Complaint at ¶1, attached hereto as Exhibit "A").

4.

Defendant Wal-Mart Stores East, L.P. is Delaware limited partnership, of which WSE Management, LLC is the only general partner, and WSE Investment, LLC is the only limited partner. The sole member of WSE Management, LLC and of WSE Investment, LLC is Wal-Mart Stores East, LLC, and the sole member of Wal-Mart Stores East, LLC is Walmart Inc. Walmart Inc. is a Delaware corporation with its principal place of business in the State of Arkansas, and it was not a citizen of the State of Georgia at the time of or immediately prior to the filing and service of this lawsuit or at any time thereafter. The principal place of business for all entities mentioned in this paragraph is 708 SW 8<sup>th</sup> Street, Bentonville, AR 72716.

5.

Plaintiff's complaint also names as Defendants CASEY DOE I, CASEY DOE II, and CASEY DOE III, who are allegedly residents of Fulton County, Georgia, and are further alleged to have been employed by Wal-Mart Stores East, LP at its store located in College Park, Georgia.

6.

The citizenship of CASEY DOE I, CASEY DOE II, and CASEY DOE III should be disregarded for purposes of determining jurisdiction under 28 U.S.C. §1441 because Plaintiff has not possibility of recovery against them and, therefore, the Casey Doe's have been frauduently joined solely for the purpose of defeating federal diversity jurisdiction. See, e.g., Illinois Cent R.R. v. Sheegog, 215 U.S. 308 (1909); Tapscott v. MS Dealer Services Corp., 77 F.3d 1353 (11th Cir. 1996).

Defendant further shows that Defendants CASEY DOE I, CASEY DOE II, and CASEY DOE III were not an owner or occupier of the subject premises within the meaning of O.C.G.A. §51-3-1, and did not undertake sole and complete control and management of the subject premises. Plaintiff was not an invitee, licensee, or trespasser of Defendants CASEY DOE I, CASEY DOE II, or CASEY DOE III. Defendants CASEY DOE I, CASEY DOE II, and CASEY DOE III, did not owe or breach any independent duty to plaintiff.

7.

Removal is appropriate because Plaintiff has “no real intention to get a joint judgment, and … there [is] no colorable ground for so claiming.” AIDS Counseling and Testing Centers v. Group W. Television, 903 F.2d 1000, 1003 (4<sup>th</sup> Cir. 1990). It is evident that no viable claim for relief can be stated against these non-diverse and fictional defendants, and their joinder is a sham which should be disregarded.

8.

Complete diversity of citizenship exists between Plaintiff and Defendants.

9.

Plaintiff claims personal injury in a slip-and-fall incident and seeks special damages for past medical expenses, and general damages for past and future pain and suffering. Plaintiff’s past medical expenses are allegedly (\$117,198.30). (Exhibit A, Complaint at ¶14). The amount in controversy, exclusive of interest and costs, exceeds \$75,000.

10.

This action is removable pursuant to 28 U.S.C. §§1332, 1441, based on complete diversity of citizenship between plaintiff and defendants.

11.

Pursuant to the provisions of 28 U.S.C. §1446, Defendants have attached as Exhibit “A” copies of all the pleadings that were provided to and served upon Defendants, including copies of all pleadings that have been filed to date in the State Court of Fulton County, Georgia for the above-styled case.

12.

Pursuant to 28 U.S.C. §1446, Defendants are not required to file a removal bond.

13.

Written notice of the filing of this Notice of Removal will be given to all parties as required by 28 U.S.C. §1446.

14.

A true and correct copy of this Notice of Removal will be filed with the Clerk of the State Court of Fulton County, Georgia, as required by 28 U.S.C. §1446.

WHEREFORE, Defendants WAL-MART STORES EAST, LP, AND CASEY DOES 1-3, pray that the above captioned lawsuit be removed to the United States District Court for the Northern District of Georgia, Atlanta Division.

This 21<sup>st</sup> day of February, 2023.

WALDON ADELMAN  
CASTILLA Hiestand & PROUT

/s/ Benjamin Harbin  
Jonathan M. Adelman  
(State Bar No. 005128)  
Benjamin Harbin  
(State Bar No. 568864)  
*Attorneys for Defendants*

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**CERTIFICATE OF COMPLIANCE**

This is to certify that the foregoing pleading is typed in 14-Point, Times New Roman font and is otherwise formatted in compliance with LR 5.1.

This 21<sup>st</sup> day of February, 2023.

WALDON ADELMAN  
CASTILLA Hiestand & PROUT

/s/ Benjamin Harbin  
Jonathan M. Adelman  
(State Bar No. 005128)  
Benjamin Harbin  
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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
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DAMIEN EMERSON, )  
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LP, CASEY DOE I, CASEY DOE    )  
II, AND CASEY DOE III,        )  
                          )  
Defendants.            )

**CERTIFICATE OF SERVICE**

I hereby certify that, on this the *21<sup>st</sup>* day of February, 2023, I electronically filed the foregoing *Notice of Removal* with the Clerk of this Court using the CM/ECF system which will automatically provide notice of such filing via electronic mail to the following attorney(s) of record:

Robert C. Edwards, Esq.  
Morse and Edwards, LLC  
191 Cleveland Avenue, SW  
Atlanta, GA 30315  
[redwards@moreseandedwardslaw.com](mailto:redwards@moreseandedwardslaw.com)  
*Attorneys for Plaintiff*

[SIGNATURE ON FOLLOWING PAGE]

This 21<sup>st</sup> day of February, 2023.

WALDON ADELMAN  
CASTILLA Hiestand & PROUT

/s/ Benjamin Harbin  
Jonathan M. Adelman  
(State Bar No. 005128)  
Benjamin Harbin  
(State Bar No. 568864)  
*Attorneys for Defendants*

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